

FROM: Michael Dunsmore  
P.O. Box 5032  
Kalispell, Montana

TO: To Whom It May Concern:

In 1994 Dunsmore was returned all of his rights following completion of a very brief sentence for a conviction. The plea conviction pertaining to a relatively innocuous sexual offense in the state of Washington. Upon termination of that "contracted" sentence, and restoration of all rights, Dunsmore had no further requirement to register as a sexual offender.

Many years later after having lived in Montana for several years, (and no additional sexual offenses since discharging the Washington state sentence in 1994) Dunsmore was convicted in Montana in 2007 for felony charge of "failure "to register as a sexual offender.

He was imprisoned as a result of only that conviction. Dunsmore presented his claims of the unlawful requirement to register, and the unlawful charge/conviction/sentence/imprisonment/ parole denial, to Montana's highest court. His claims were denied by that court( after denying counsel to assist him, his claims were either [wrongly] " procedurally barred and/or not even acknowledged, addressed, or ruled on by that court as presented.) Dunsmore timely filed a petition for habeas corpus in the Federal District Court for Montana at Missoula. That court's foundational adjudicatory errors/oversights are the nexus of this letter (?)

I saw the Board of Pardon and Parole( B.O.P.P.) three times for my conviction of "failure to register as a sex offender." Original and only crime from 1991, Thurston County, WA. For which I was not required to register after August 8, 1994, and I have no tier levels.

At Montana State Prison, the Department of Corrections,(M.S.P.) requested a psychosexual evaluation, (Which was against court orders.) and later the Board of Pardon and Parole ordered a "polygraph" which was formatted around questions about my past discharged/dismissed crime, and had nothing to do with my five week failure to register. The B.O.P.P. then recommended S.O.P.Level II, which I had been rejected twice by the D.O.C treatment program's director, Blair Hopkins. I cannot admit guilt to a new crime so cannot complete the S.O.P. group. So the B.O.P.P. had passed me until discharge. I was not read my Miranda Rights at the polygraph and plead the 5<sup>th</sup> when the questioning surrounded crimes that I am not convicted of. Thus violating my 5<sup>th</sup> amendment right and my right to privacy, see: U.S. vs. Antelope, 395 f3d 1128-unlawful to violate 5<sup>th</sup> amendment rights, to self-incriminate, for treatment purposes.

Also, State vs. Ashley 2008 MT. 83.-compaaring the B.O.P.P. to the Ashley decision, if the Judge/Court does not issue a Condition of Probation unless it has a NEXUS of connection to the offense or to the defendant, how then can the B.O.P.P. have greater authority than the courts?

I know that the B.O.P.P. has structured it's authority by recommending treatment outside of the criteria for the crime of conviction as well as placed me in an impossible burden since I will not discuss a crime I've discharged 19 years ago and is not of the State of Montana's concern.

Article II Section 31, Montana Constitution: Ex post facto, obligations of contracts and irrevocable privileges. No ex post facto Law, nor any Law impairing the obligation of contracts... shall be passed by the Legislature".

Montana Legislature has obviously-albeit perhaps unwittingly-created a conflict with its "retroactive" "registration" requirement statutes as they pertain to "contracted" convictions. It is that "conflict" that Dunsmore feels that he has a right to be addressed.

The issue that Montana's "retroactive" "registration" statutes are contrary to Montana's Constitution which expressly forbids conflict between the Montana "Constitution" (re. "Contracts") and Montana's "retroactive" "registration statutes. It is clearly noted that "plea agreements" are in fact "contracts" and, as "contracts", they fall under the analysis of M.C.A. title 28, rather than "criminal" Law (title 46 which applies-obviously-to only non-contracted convictions.)

Montana has failed to comply with their own laws constitutes a breach of the due process guaranteed by the United States Constitution. (Hicks vs. Oklahoma; 447 U.S. 334; 65 L.Ed.2d 175 (1995).

Simons vs. State; 206 M. 264, 670 P.2d, 1372, 40 St. Rep. 1650 (1983) " The Supreme Court affirmed, ruling that the [Oregon] State... had not structured its activities in such a way as to purposely avail itself of the privilege of functioning in Montana. Furthermore the court ruled... it would be unreasonable [for Montana] to exercise jurisdiction over the [other] state... Therefore, and certainly if the state of "Montana" has no jurisdiction over "Oregon" (Simons vs. Supra). Surely then it does not have jurisdiction over the state of Washington. So Montana "statutes and constitution" Should compensate me for my charge, conviction, sentence and imprisonment.

In closing, it is abundantly clear that this objection is well beyond contest and this panel should absolutely enter into the matter and affirm my concerns in this matter, and consider my position as articulated above.

Thank you and sincerely,

Michael Dunsmore  
mlb

RECEIVED

JAN 14 2013

Region 1 OPD

1 STACY BOMAN, Deputy  
2 OFFICE OF THE COUNTY ATTORNEY  
3 Flathead County, Montana  
4 920 South Main, Suite 201  
5 Kalispell, MT 59901  
6 Telephone: (406) 758-5630  
7 Attorneys for Plaintiff

8 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
9 THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

10 STATE OF MONTANA, ) Cause No. DC-12-359(C)  
11 )  
12 Plaintiff, )  
13 )  
14 vs. ) NOTICE OF INTENT TO SEEK  
15 ) DEFENDANT'S DESIGNATION  
16 ) AS A PERSISTENT FELONY OFFENDER  
17 )  
18 MICHAEL DUNSMORE, )  
19 )  
20 Defendant. )

21 \*\*\*\*\*  
22 Pursuant to Section 46-18-502(1), MCA, the law provides  
23 that a persistent felony offender shall be imprisoned in the  
24 State Prison for a term of not less than 5 years or more than  
25 100 years, or shall be fined not to exceed \$50,000.00, or both,  
if the defendant is 21 years or older at the time of the  
commission of the present offense. Except as provided in  
Section 46-18-222, MCA, the imposition or execution of the first  
5 years of a sentence imposed under this procedure, may not be  
deferred or suspended.

26 The State hereby gives notice of its intent to seek the  
27 Defendant's designation as a persistent felony offender. That

28 *27C 1-15-13*  
29 Notice of Intent to Seek PFO Designation

*How can a person be convicted without a trial or judge?*

1 designation will be based on the September 28, 2012 conviction,  
2 for Failure to Register as Sexual Offender in Flathead County,  
3 Montana, Cause No. DC-2006-428, for which he sentenced to  
4 Montana State Prison in 2010.

5  
6 DATED this 14<sup>th</sup> day of January, 2013

7 OFFICE OF THE COUNTY ATTORNEY  
8 Flathead County, Montana

9 By Stacy Boman  
10 Stacy Boman, Deputy

11  
12 CERTIFICATE OF SERVICE

13 I, Lori Schroeder, of the Flathead County Attorney's Office, do  
14 hereby certify that on the 14<sup>th</sup> day of January, 2013, a copy of  
the foregoing document was delivered to the following named  
individual(s) in the manner indicated below:

15 Jessica Polan  
16 OPD

- [ ] U.S. mail, first class postage prepaid  
[X] Public Defender folder, Flathead County  
Attorneys Office  
[ ] Hand delivery  
[ ] Personal service  
[ ] Sent by fax

17  
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19 Lori Schroeder  
20 Lori Schroeder  
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